

The issues regarding whether claimant suffered accidental injury or whether claimant's accidental injury arose out of and in the course of his employment, are issues enumerated in K.S.A. 44-534a as appealable from preliminary hearings, and thus are properly before the Appeals Board.

The medical evidence supports the finding that claimant, while having a long-term pre-existing back problem, did aggravate his back condition, at least temporarily, while employed with respondent. The medical records placed into evidence at the Preliminary Hearing of August 9, 1995, do support claimant's contentions of aggravation of a pre-existing condition and the Administrative Law Judge's finding that claimant's accidental injury arose out of and in the course of his employment is affirmed by the Appeals Board.

The issues regarding whether claimant is temporarily totally disabled or entitled to additional ongoing medical treatment, are not issues enumerated in K.S.A. 44-534a as appealable from preliminary hearings. K.S.A. 44-534a specifically grants Administrative Law Judges the authority to decide issues regarding medical treatment and temporary total disability compensation. The Administrative Law Judge did not exceed her jurisdiction in granting the benefits to claimant.

In the Order of October 3, 1995, the Administrative Law Judge declined respondent's request to terminate temporary total disability compensation holding that the original Order issued on August 10, 1995, was before the Appeals Board and a decision had yet to be rendered on said opinion.

The Administrative Law Judge appears to deny respondent the right to contest claimant's temporary total disability compensation at a later date, due to an earlier order having not been reviewed by the Appeals Board.

There is no limit under K.S.A. 44-534a as to how many preliminary hearings a party may request. There is also no language contained in the statute which prohibits a party from requesting an alteration in the award of temporary total disability compensation at a time when the earlier order is pending before the Appeals Board. The Administrative Law Judge's refusal to consider respondent's motion based purely upon the appeal of the earlier order being before the Appeals Board is improper. As such, the Appeals Board finds under K.S.A. 44-551, the Administrative Law Judge exceeded her jurisdiction in refusing to consider respondent's request to terminate temporary total disability compensation.

As such, this matter is remanded back to the Administrative Law Judge for consideration of respondent's motion to terminate temporary total disability compensation and for a ruling on said issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated August 10, 1995, granting claimant temporary total disability compensation and ongoing medical treatment, is affirmed in all respects.

It is further found by the Appeals Board that the October 3, 1995, Order of Administrative Law Judge Nelsonna Potts Barnes, should be, and is hereby, remanded back to the Administrative Law Judge for a ruling on respondent's motion to terminate temporary total disability compensation.

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton Kennard, Pittsburg, Kansas
M. Doug Bell, Coffeyville, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director